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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 432

WILLIAM E. LAMB, PETITIONER

vs.

STERLING B. CRAMER, ET AL, RESPONDENTS

The brief for Petitioner in reply renders advisable the citation of additional authorities sustaining the points made in respondents' brief, and to make clearer certain points therein. Therefore this addendum to respondents' brief is filed.

I.

IN ADDITION TO HIS ACCOUNTABILITY TO THE DISTRICT COURT IN THIS SUPPLEMENTAL PROCEEDING FOR THE FUNDS TAKEN UNDER THE (1) DOCTRINE OF LIEN OF EQUITABLE LEVY CREATED BY THE FILING OF THE ORIGINAL BILL, AND (2) THE DOCTRINE OF PURCHASER PENDENTE LITE, THE PETITIONER'S POSITION ALSO COMES WITHIN THE FURTHER ADDITIONAL (3) DOCTRINE OF THE TAKER OF TRUST FUNDS WITH FULL KNOWLEDGE OF THE EQUITIES

As attorney for Mrs. Holland the petitioner was conclusively presumed to have known the facts known by her and he must, as a lawyer, have known what the consequences of the suit would be if com-

plainants' allegations were found to be true by the court.

It was alleged in the original bill: that the very estate unlawfully and fraudulently transferred from Holland to his wife was acquired from the several banks, plaintiff and intervenors, (R. 7) by his indorsement and guaranty, and that (R. 8-9) in order to avoid his liability he had transferred his whole estate to his wife, Florence T. Holland, the manner of the transfer being particularly set forth; that the result of said transfer was (R. 11) to divest the said Holland of all the property of every kind and character which he had and to invest his wife with all said property. A large part of the real estate is described, and it is stated (R. 19) that the whole of Holland's estate was transferred to his wife without consideration, including all his property both real, personal and mixed, and that he, the said Holland, proceeded (R. 20) to actually transact business and invest and reinvest the proceeds in the name of his wife, the effect being that W. P. Holland was doing business under the name of Florence T. Holland; that an injunction (R. 24-25) was sought to prevent further transfers; that a decree was sought impressing a lien upon all of the property (R. 25-27); that it was alleged (R. 27) that the said Florence T. Holland held in trust for the creditors of W. P. Holland all the said property.

The petitioner as counsel in the case must have known the legal effect of the filing of the original bill and must have known that from the earliest time the decisions of the State of Mississippi have held:

A Fraudulent Grantee is in Law a Trustee EX MALEFICIO for the Benefit of the Creditors of Fraudulent Grantor.

Calhoun v. Burnett, 40 Miss. 599
Simmons v. Ingram, 60 Miss. 886
Johnson v. Ingram, 9 Sou. 822
Smith v. Jeffrey, 16 Sou. 377
Ames v. Dorroh, 76 Miss. 187
Bank of Hickory v. McPherson, 102 Miss. 852
Citizens National Bank v. Grocery Co. 113 Miss. 87
Peters Branch Int. Shoe Co. v. Gunn 121 Miss. 679
Orgill v. Gee, 152 Miss. 590

In fact, petitioner must have known as a general principal of law that:

The Grantee of Property in a Fraudulent Conveyance is a Trustee for the Creditors of the Grantor.

Pomeroy Equity Jurisprudence, 4th Ed. Vol. 3, Sect. 1048-1053
Moore v. Crawford, 130 U. S. 122
Ex Parte Boyd, 105 U. S. 647
Crawford v. Broussard, 260 F. 122 (C.C.A. 5)

Cert. denied in above in

Broussard v. Crawford, 251 U. S. 560.

Also that,

The Taker of Trust Funds, with Knowledge of the Equities, from a Fraudulent Grantee Occupies the Same Position of Trust as the Fraudulent Grantee.

Watson v. Dickens, 12th S. & M. (Miss. 1849) 608

Agricultural Bank v. Dorsey, Freeman Chy. (Miss.) 338

Mills v. Gattman, 53 Miss. 721

Thomson v. Hester, 55 Miss. 656

Hodges v. Hickey, 67 Miss. 715

Ames v. Dorroh, 76 Miss. 187

Independent Coal & Coke Co. v. U. S. 274 U. S. 640

We quote from the *Independent Coal & Coke Co.* case as follows:

> "It is ancient and familiar learning that one who fraudulently procures a conveyance may not defeat the defrauded grantor or protect himself from the consequences of his fraud by having the title conveyed to an innocent third person. Cf. Merry v. Abney, Freem. Ch. 151, 22 Eng. Reprint, 1123; Moore v. Crawford, 130 U. S. 122, 128, 32 L. Ed. 878, 880, 9 Sup. Ct. Rep. 449; H. C. Girard Co. v. Lamoureux, 227 Mass. 277, 116 N. E. 572; McDaniel v. Sprick, 297 Mo. 424, 249 S. W. 611. Equity may follow the property until it reaches the hands of an innocent purchaser for value.

Moore v. Crawford, 130 U. S. 120
Second Perry on Trusts, 5th Ed. 172, 211

No Actual Fraud is Necessary. It is Enough that the Taker, with Knowledge, Acquired the Property from a Fraudulent Grantee not as a Bona Fide Purchaser for Full Consideration.

Smith v. Ayr, 101 U. S. 320
Central National Bank v. Ins. Co., 104 U. S. 54
Union Pacific R. R. Co. v. McAlpine, 129 U. S. 305
Omaha National Bank v. Fed. Reserve Bank, 26 Fed. (2) 884

Certiorari denied in the above in

Wyoming Bank v. Omaha National Bank 278 U. S. 615
Browning v. DeFord, 178 U. S. 196
Harmon v. Hoskins, 56 M. 142
Marks v. Bradley, 69 M. 1

"Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. And courts of equity will not only interfere in cases of fraud to set aside acts done, but they will also, if acts have by fraud been prevented from being done by the parties, interfere and treat the case exactly as if the acts had been done."

1 Story, Eq. Jur. Paragraph 187

Whenever the legal title to property is obtained through means or under circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps,

have had any legal estate therein; and a court of equity has jurisdiction to reach the property either in the hands of the original wrongdoer, or in the hands of any subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right and takes the property relieved from the trust.' Pomeroy, Eq. Jur. Par. 1053.

In *Huxley v. Rice, 40 Mich. 82*, it is said:

'It is the settled doctrine of the court that where the conveyance is obtained for ends which it regards as fraudulent, or under circumstances it considers as fraudulent, or oppressive, by intent or immediate consequence, the party deriving title under it will be converted into a trustee in case that construction is needful for the purpose of administering adequate relief; and the setting up the Statute of Frauds by a party guilty of the fraud or mistake, in order to bar the court from effective interference with his wrong-doing will not hinder it from forcing on his conscience this character as a means to baffle his injustice or its effects.' The fraud of which Moore was guilty was in preventing the conveyance to himself, which would have inured to Monroe, and in obtaining it to his wife, so as to reap the benefit which belonged to his grantee. Mrs. Moore stands in her husband's shoes, and by accepting with knowledge is to be treated as a party to his fraud and profiting by it, or as a mere volunteer, assisting him to perpetrate the fraud and to profit by it, and is hence to be held, as he could have been, a trustee *ex maleficio*."

Moore v. Crawford, 130 U. S. 122

II.

AN ATTORNEY IS AN OFFICER OF THE COURT, THE ALTER EGO OF HIS CLIENT. ALWAYS "IN COURT". SUBJECT TO SUMMARY ORDER OF THE COURT. HE CANNOT BE A TAKER BONA FIDE OF SUBJECT MATTER IN LITIGATION EITHER FOR ATTORNEY'S FEES, OR OTHERWISE, ESPECIALLY IF SUCH SUBJECT MATTER OF LITIGATION IS TRUST FUNDS.

Counsel for petitioner iterates and reiterates the fair and honorable position which petitioner occupies in this case, but a closer examination of the facts shows, with due deference, that his position is not so enviable. In our brief on the merits on Pages 7-8 and 15 the following voluntary actions of petitioner are cited as having the effect of general appearance by him to the supplemental proceedings, and waiver by him of personal jurisdiction of the court, (in addition to his position as counsel in the case) viz.,

(1) By allowing the restraining order (R. 127) to be entered, by consent, against the defendant and petitioner as her attorney; (See respondents' brief, Pages 7-8).

(2) The entry in the decree in the original cause, to which he was then a party, of the reservation, "William E. Lamb, or Butler, Lamb, Foster & Pope not to be prejudiced hereby" (R. 146) (See respondents' brief, Page 8).

(3) His answer seeking complete exoneration. (R. 147-172.) (See respondent's brief, P. 8.)

(4) His agreement in person to continue the hearing on the citation to June 9, 1930. (R. 146-147) (See respondents' brief, Page 8) (See respondents' brief also at point V, Page 34, for the cases sustaining the propositions).

In answering these several propositions counsel for the petitioner seek, with a few well chosen words, to sweep away the effect of the actions of petitioner by the following statements made on Pages 10 and 11 of their reply brief herein as follows:

By (1) (Reply brief Page 10) That although petitioner had been made a party to the cause (R. 130) on petition for the very order (R. 126) and although the same order (R. 127) was entered by consent that the words "enjoining and restraining the defendant, Florence T. Holland, either personally, through her agents or attorneys, from directly or indirectly distributing, disposing, mortgaging or otherwise alienating, etc." did not refer to the petitioner.

We cannot understand what other conclusion could be drawn either by the district court or by this court than that the supplemental petition was filed for the very purpose of setting aside the transfers made from Mrs. Holland to petitioner and others, and that said petition sought an injunction to prevent further transfers pending the hearing, and that the order by consent was entered for the very purpose of enjoining this petitioner, or Mrs. Holland, from making any further transfers.

By (2) (Reply brief Page 10) Counsel explains that the request of petitioner that entry be made in the final decree, providing no prejudice to petitioner thereby, was a request made to counsel and not to the court, thereby making a distinction without a difference, and seeking to withdraw from the effect of the decree and making it a contract and not an order of the court.

By (3) (Reply brief, Page 11) Counsel attempts to explain away the order of continuance entered by consent (R. 146-147) by saying that it was an order of a continuance of the citation and not of the supplemental petition. However present counsel for petitioner may regard this "bifurcated," "hybrid" petition so contemptuously referred to by them (and "contemptuously" here does not mean "civil" contempt) petitioner himself evidently understood very well what was meant by the pleading whatever its name may be because in his answer which was filed in obedience to the agreement to continue, he answered (R. 147) the "*petition* upon which the citation was issued," and in addition very plainly stated in his answer at the beginning of each paragraph of his answer (R. 147-172) that he was answering the *petition* paragraph by paragraph, and finally, that there might be no mistake, he stated in one paragraph of his answer (R. 169) that he was also answering the *citation* as well as the *petition*, and stated further:

> "Now having fully answered both said *citation* and said *petition*, said William E. Lamb prays that he be held to have committed no

> contempt as in the *petition* alleged, or as in the *citation* charged, and that he be fully and completely exonerated from all charges herefor, and fully and completely discharged from said *citation*, and that the same be discharged as against him; that the said *petition* be *dismissed* as against him, and that he be hence dismissed with his costs, etc."

Explaining away this answer in (No. 4) counsel for petitioner say: (Reply brief, Page 11)

> "Faced with such charges, calling in question his professional conduct and disparaging his reputation, he, (petitioner) thought it essential to make a full and detailed answer to the allegations and to ask exoneration from the contempt charge. That he did and no more."

If petitioner's counsel had stopped with that statement the position would have been much clearer, but in the next breath they state that petitioner, although he desired fully to answer the charges which he thought called in question his professional conduct and disparaged his reputation yet counsel say that petitioner,

> "attempted and intended to limit his appearance."

and make the statement, (Reply brief, Page 12)

> "And it is not suggested how he could have guarded his appearance to that purpose more completely than he did."

We cannot understand how any counsel who seeks to defend his conduct and answer charges

which he thought disparaging to his reputation could want to "limit" or "guard" his appearance. It appears to us that such an action would have the effect of "limiting" the inquiry into such charges and "guarding" against the full inquiry which he ostensibly offered.

The present counsel have no intention of casting any aspersions upon the character of petitioner, and here assert that there is no personal feeling of any kind involved in the trial of these questions. There is sought to be submitted to the court directly the legal question whether or not a trustee *ex maleficio* seeking to withhold the trust estate from its rightful owners may pay out for that purpose a great part of the corpus of the estate to one assisting in the withholding of the estate, whether an attorney or any other person, who has full knowledge of the entire situation.

Respondents seek to know the facts in reference to this transfer *pendente lite* of a large portion of the estate. They have not been informed what contract was entered into between the trustee *ex maleficio* and petitioner in regard to fees or whether the fees paid were by contract or otherwise. They have not been allowed to inquire as to the rights of the various parties under existing equities, but have been met at every turn with technical "limited" and "guarded" appearances, and confronted with claimed "privileges" on behalf of an attorney who seeks to have written into the record an exoneration clearing his character and reputation on the equities but founded upon technical privileges.

It is stated by this court in the case of *Gay v. Parpart* in no uncertain terms that no attorney can be an innocent purchaser for value of property in litigation who bought while the suit was pending, and who was attorney for a party in that suit throughout and whose purchase was from such party.

Gay v. Parpart, 106 U. S. (16 Otto) 679

In the case of *Browning v. DeFord* Mr. Justice Brown delivered the opinion for this court, holding that

> "It is consonant neither with good morals, nor with sound sense to hold that one may take a mortgage upon the property of another which he knows to have been fraudulently acquired and to which the purchaser has no valid title, whether the vendor elect to pursue the purchaser by a retaking of the property, or by an action for the price and an attachment of the property to secure the debt. Whichever remedy be pursued the fact remains that at the time the mortgage was taken, the mortgagor had a voidable title to the property mortgaged".

Browning v. DeFord, 178 U. S. 196

In the above case Mr. Vance was an attorney in the case and claimed to have had no knowledge of the fraudulent character of the purchases made by Wolf & Sons upon some of which purchases he, Vance, took security, but the court held that the fact that he was a lawyer and intimately connected

with the matters was sufficient to justify the court in laying the whole matter of his connection with the alleged fraudulent scheme before the jury.

In *Galpin v. Page*, this court said:

> "The decree being thus reversed, the title acquired by Page, the purchaser at the commissioner's sale, fails with it. He was one of the attorneys of the plaintiff, Gray, and the law imputes to him knowledge of the defects in the proceedings, which were taken under his direction and that of his copartners, to obtain service upon the infant. The conveyance by him of an undivided half to his law partner, also one of the plaintiff's attorneys, was made after the decree of the district court had been reversed for want of jurisdiction over the infant. The partner also took his interest with knowledge of this defect. The protection which the law gives to a purchaser at judicial sales, is not extended, in such cases, to the attorney of the party who is presumed to be cognizant of all the proceedings".

Galpin v. Page, 18 Wall. 350

Brent v. Maryland, 18 Wall. 430

Counsel for petitioner on Page 13 of their reply brief, and on Pages 26-27 of their original brief, liken the position of petitioner in receiving this large portion of the trust estate to an innocent physician, or hotelkeeper furnishing the trustee *ex maleficio* the necessities of life.

In this present case the petitioner cannot by any means place himself in the position of the butcher, the baker, or the candlestick maker. He oc-

cupies a much more dignified position and, therefore, subject to more responsibility, his responsibility being measured by his position and his knowledge of the equities in the case.

It is not our contention that lawyers ought not to be paid fees in proper cases. Such a doctrine would be self-destructive. We read that in former times counsellors, advocates, and barristers had no right to charge and *enforce* the payment of compensation for their services, such services being considered as purely honorary and being presumed to be rendered gratuitously.

Kennedy v. Broom, 13 C. B. M. S. 677
143 Reprint 268; 1 E. R. C. 789;
Third Blackstone Commentary, Page 28

Also,

Swinfen v. Chelmsford, 5 H. & M. 890

where the court said:

> "They have no legal claim to any remuneration for the services they render, though they usually receive a fee, a honorarium, and they undoubtedly (in the ordinary course of business) enter into no express contract."

While this rule does not prevail in the United States, nevertheless, it is a very far cry to say that the honorable profession has departed so far from the original rule that one claims to be entitled to so large a portion of a trust estate as a fee for assisting the trustee in an attempt to destroy the trust or in

withholding said estate from the cestius trust thereby consummating the fraud.

> "An attorney at law is in a sense an officer of the state with an obligation to the public no less significant than his obligation to his client."

In *Re: Bergerone, Mass. 107 N. E. 1007*

> "An attorney at law is not indeed in the strictest sense a public officer, but he comes very near it as was said by Lord Holt 'the office of an attorney concerns the public and it is for the administration of justice'."

Robinson Case, 131 Mass. 376
41 Am. Rep. 239

> "Attorneys * * * though not properly public officers, are quasi officers of the State whose justice is administered by the courts."

Matter of Mosness, 39 Wis. 509
20 Am. Rep. 55

It is an elementary principle of law that an attorney employed by a trustee can never look to the trust estate for pay for his services but the contract is personal with the trustee. In no case have we been able to find that an attorney has been allowed to retain as fees a part of a trust estate for his unsuccessful services in seeking to destroy the trust.

III.

THE RESPONDENTS WERE CORRECT IN PROCEEDING IN THE LOWER COURT BY SUPPLEMENTAL PETITION IN THE ORIGINAL CASE AS AGAINST PETITIONER, A DEBTOR OF THE ESTATE.

In addition to the authorities cited in our brief herein at Page 38, paragraph (D) of Point VI, the following authorities are pertinent to the above proposition.

Independent Coal & Coke Co. v. U. S.
274 U. S. 642

from which we quote:

> "The suit is in the nature of a supplemental bill in aid of the former decree and is an appropriate method of securing the benefit of the first decree when subsequent events have made necessary some further relief in order that the plaintiff may enjoy the full fruits of the victory in the first suit. Cf. Root v. Woolworth, 150 U. S. 401, 37 L. Ed. 1123, 14 Sup. Ct. Rep. 136; Shields v. Thomas, 18 How. 253, 262. 15 L. Ed. 368, 372; Thompson v. Maxwell Land-Grant & R. Co., 95 U. S. 391, 24 L. Ed. 481; Story Eq. P. 10th Ed. Paragraphs 338, 339, 345, 351 (b) 353, 429, 432; Cooper, Eq. Pl. 74, 75. In determining the scope of the present bill and the relief which may be given upon it, we may consider the pleadings and proceedings in the earlier suit, the nature of which are fully disclosed in the opinion and decree in that suit, which are pleaded here."

Also compare:

Riverdale Cotton Mill Co. v. Ala. & G. Mfg. Co., 198 U. S. 188

Blossom v. Milwaukee, etc. R. R. Co. 1 Wall (68 U. S. 655)

Kneeland v. American Mortgage & Trust Co. 136 U. S. 89

Bien v. Robinson, 208 U. S. 423

Peck v. Elliott, 79 Fed. 10 (C. C. A.)

The above case of *Peck v. Elliott* is interesting because decided by the Circuit Court of Appeals of the *Sixth* Circuit, Judges Taft, Lurton and Sage sitting and Judge Lurton delivered the opinion of the court. The case was one wherein by auxiliary petition in the original suit receiver asked the aid of the court to enable him to collect a debt due the corporation for stock liability. In this connection Judge Lurton, speaking for the court, said:

> "The jurisdiction of the court in the principal cause is not questioned, and cannot be in this collateral suit. Compton v. Railroad Co., 31 U. S. App. 486-529, 15 C. C. A. 397, and 68 Fed. 263; Mellen v. Iron Works, 131 U. S. 352-367, 9 Sup. Ct. 781; Lumley v. Railroad Co., 22 C. C. A. 60, 76 Fed. 66. The fact that the circuit court had possession of all the assets of the Southern Malleable Iron Company, for the purpose of winding up its affairs as an insolvent corporation, is the fact which made it admissible to bring a debtor of that corporation into the court, *to the end that his debt might be ascertained and payment coerced. For the purpose of collecting in choses in action, the*

court might direct its receivers to institute independent suits in that or courts of the state, or cause such debtors *to be made defendants in the principal cause*, and determine for itself any question which might be involved by the defenses to the claim. Such a proceeding *would not involve any question of citizenship, or amount in controversy, nor mode of trial.* The complete jurisdiction of the court over the res, the property and assets of this corporation, involved its rights to bring before it persons having possession of any of those assets or having claims thereon, or *who were indebted to it*, and *either itself hear and determine all controversies*, or refer them to a master or to a jury, as it saw fit. A court of equity is not deprived of jurisdiction simply because a purely legal question becomes collaterally involved. It might, in its discretion, submit such controversy upon issues made to a jury, or dispose of them without doing so. That the liability of appellee was one of a legal character did not operate to defeat the jurisdiction, and bring its proceedings against him to a stand. These questions seem conclusively settled by White v. Ewing, 159 U. S. 36, 15 Sup. Ct. 1018, a case which arose upon a like proceeding in the same court, and in which certain questions were certified by this court under the court of appeals statute". (Italics ours.)

The above case of *Peck v. Elliott* was followed by the same circuit in

Cunningham v. City of Cleveland,
98 Fed. 657

Counsel have made much in their brief of the fact that there were two proceedings as against the

petitioner, one by supplemental petition in the present cause, and the other by original ancillary proceedings in cause No. 433 (this docket). The second suit No. 433, was filed by the receiver alone since he was appointed by final decree after the supplementary petition had been filed by the respondents in cause No. 432 (this docket). It was thought by the receiver that since he had been authorized by the decree to bring necessary suits to collect assets of the estate that he would rather disassociate the claims of the respondents in the supplemental proceedings with his own claims as receiver under the decree, as he had a right to do. The proceedings could easily have been consolidated by the court, and it was thought that this ancillary proceeding would eliminate all questions of contempt, and the case might be tried on the merits to see whether or not the petitioner was entitled to approximately one-third of the estate finally recovered.

IV.

THE EXACT DESCRIPTION OF THE TRUST ESTATE IN THE ORIGINAL BILL, PLEADINGS AND PROCEEDINGS, WAS NOT NECESSARY IN ORDER THAT PETITIONER MIGHT HAVE FULL KNOWLEDGE OF THE EQUITIES THEREIN SET FORTH AND BE BOUND THEREBY IN HIS DEALINGS WITH THE ESTATE.

On pages 12-18 in their reply brief counsel for the petitioner responds to points V, VI, VII, VIII, made in respondents' brief and sets up at large a defense on the merits in behalf of petitioner to the effect:

1. That there was not a sufficient description of the trust property in the original bill.

2. That it was not shown that the property sought to be charged with lien was within the jurisdiction of the court at the time of the filing of the bill.

3. Setting forth the amount of work done by the petitioner for Mrs. Holland, the fraudulent grantee, about this suit and other matters and alleging that he was equitably entitled to his fees.

It is stated by counsel on Page 13 of the reply brief as follows:

> "Respondents have cited to the Court a large number of cases to show that under the law of Mississippi, the filing of a judgment creditor's bill creates an equitable lien upon the property of the defendant described in the bill and that all subsequent transferees *pendente lite* take subject to this lien. There is no need for us to discuss in detail these cases, most of which are only remotely in point: for *we do not deny any of the propositions of law urged by the Respondents on this point.* It is submitted that no matter how broadly or narrowly the rule of equitable liens or constructive possession, or property in *gremio legis*, be interpreted, at least two essential requisites (as set forth below) are lacking in the present petition, treating the latter as a supplemental bill".

Counsel proceed then to set forth the two essential requisites lacking, to-wit: on Page 14 under Paragraph 1, "in order that an equitable lien may at-

tach to property, it is essential that such property be specifically described in the bill." This is plainly a fallacious statement in that it is not necessary that property should be accurately, minutely and particularly described in an original creditors bill in order that an equitable lien may attach to the property as will be seen by reference to

Miller v. Sherry, 69 U. S. (2nd Wall.) 237

quoted by counsel but the true statement is that in order to constitute "*Constructive notice*" of the claimed equitable lien the property must be accurately described in the original bill. We think that the property under the decision of *Miller v. Sherry* was accurately enough described even for constructive notice as Mr. Justice Swain said in that case at Page 250 of the *2nd Wallace*, quoting,

> "In Griffith v. Griffith, 9th, Page 317, it is said 'to have made such a bill *constructive* notice to a purchaser from the defendant down, it would have been necessary to allege therein that these particular lots, or that *all the real estate of the defendant* in the City of New York had been purchased and paid for either wholly or in part with the funds of the infant complainant. Or some other charge of a similar nature should be inserted in the bill to enable purchasers by examination of the bill itself to see that this complainant claimed the right to, or had some equitable lien in the premises'."

Petitioner, as counsel for the fraudulent grantee, did not need constructive notice. He knew the whole facts, and as testified to in the main case,

showed her how to make entries in her books, attended to her tax claims and knew the very intricacies of the fraudulent transfers, and he cannot now seek to hide behind any technical, "limited" or "guarded" defense of failure of description to give constructive notice.

The second alleged requisite lacking in the case below is alleged by counsel for the petitioner under No. 2, Page 15 of his brief as follows:

> "2. It is elementary that in order for an equitable lien to attach by virtue of the mere filing of a creditor's bill, the property sought to be charged with such lien must be within the jurisdiction of the Court".

Had counsel read further and desired to quote from the much quoted authority of *Miller v. Sherry* he could have found this very proposition set forth by Justice Swain at *Page 249* of the *2nd Wallace* in the following language:

> "When the object of the suit is to compel the conveyance of the legal title by the defendant, and the decree does not require a sale, the title will not pass until the deed is executed unless it be provided, as has been done in some of the States, by statute, that the decree itself shall operate as a conveyance. In all such cases, the court has power to compel the defendant to convey. When the property is beyond the local jurisdiction of the court, and the defendant is before it, the court can compel him to convey, as it may direct, for any purpose within the sphere of its authority. This is an ordinary exercise of the remedial juris-

diction of those courts, and the power is one of the most valuable attributes of the equity system".

Miller v. Sherry, 69 U. S. (2nd Wall.) 237

"Equity has power over the person. Even though the property is situated out of the state it is proper by orders in equity to control the property situated outside the state".

Mitchell v. Bunch (2) Paige's Chancery, 22 Am. Dec. 669

Since no authority is cited for this proposition, No. 2, we take it that counsel means to state that when a bill to set aside fraudulent conveyances is filed that regardless of knowledge of the fraud, if the property happens to be without the state, one, knowing of the fraud, can safely take the property with or without consideration, and if he, personally, afterwards, comes within the jurisdiction of the court his transfer from the fraudulent grantee, with knowledge of the equities, is free from attack, because the property so transferred was without the state, or without the jurisdiction of the court. As to the strict definition of a "lien" there may be no lien on property not within the jurisdiction of the court upon the filing of the bill, but there rests upon all persons everywhere the duty, whether attorney or layman, to do the right and equitable thing, and any court of equity with jurisdiction of the person would enforce the equitable principles by making the person taking with knowledge of the fraud return into court the property received with such knowledge of the fraud. In the statements of the equitable doctrine that a

trust fund may be traced, and the party receiving with knowledge of the trust will be held accountable, we have been unable to find any limitations that the taker of trust funds or fraudulently conveyed property is protected by state lines, or jurisdictional lines of court. Whenever any person with knowledge of the fraud receives trust property he is liable therefor wherever he may be.

In defending the petitioner on the ground that he worked hard and was entitled to something for his services, counsel state further with great particularity the services of petitioner to the fraudulent grantee in preserving the estate and in preventing its deliverance to the creditors, but we think that this defense would be more properly made in the court below. They see now that there must be some defense made for the action of their client in taking so large a portion of the estate with full knowledge of the equities involved, and are attempting here to try the case upon the merits as to whether or not the petitioner was entitled to something for his services. We notice particularly that the contract between the fraudulent grantee and petitioner is not set forth. The record will show (R. Page 149 of cause No. 433) that petitioner came to Mississippi as special counsel for this fraudulent grantee and spent seventeen months in the home of the fraudulent grantee in Mississippi not only assisting in an effort to withhold the property finally adjudged by the court to have been fraudulently transferred, but in filing counter suits in the sum of $10,000,000.00 or so, and in going through various forms of litigation during the entire seventeen months in an effort to prevent the delivery

of the estate to the creditors. The record in cause No. 433 shows (Page 149) that he was formally accepted as a member of the bar of the court before which this case was tried. He was also admitted to practice in the several courts of Mississippi where various branches of the case were litigated, and that during his stay these various funds were withdrawn. Who knows what the contract was between the fraudulent grantee and this petitioner? The court is not informed as to whether or not there may be agreements existing between the parties in writing, or otherwise, which would clear this situation up. The respondents only ask that this case be returned to the district court where these questions may be inquired into, and the petitioner may be given the chance, without limited or guarded appearances, to freely, and frankly, defend his title to that portion of the trust estate.

Respectfully submitted,

GERALD FITZGERALD,
Counsel for Respondents.

SAM C. COOK,
GARNER W. GREEN
of Counsel

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pp 2, 3, 4

SUPREME COURT OF THE UNITED STATES.

No. 432.—October Term, 1931.

William E. Lamb, Petitioner, *vs.* Sterling B. Cramer, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 14, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

In this case certiorari was granted, 284 U. S. —, to review a judgment of the Circuit Court of Appeals for the Fifth Circuit, 48 F. [2d] 537, reversing a decree of the District Court for Northern Mississippi, which quashed citation issued on respondent's petition to punish Lamb for contempt, and which dismissed the petition.

The petition was ancillary to a suit brought to set aside conveyances of land and other dispositions of money and personal property by the defendant Holland to other defendants, as in fraud of judgment creditors. The petition set up that pending the suit Holland had transferred to Lamb, who was acting as her attorney, a substantial part of the property involved in the suit, said to have been in payment of attorney's fees. It prayed citation against Lamb, the petitioner here, to show cause why he should not be held in contempt of court, and for other relief, including an injunction restraining further transfers of the property, and the cancellation of those already made.

Lamb appeared and answered the petition as one to punish for contempt. Pending disposition of that proceeding, final decree, in the main cause, was entered on consent, declaring that the judgments of the plaintiffs in that suit were a lien on the property described in the bill from the date of its filing, and appointing a receiver to take possession of the property and liquidate the lien. The decree as entered was stated to be without prejudice to the rights of Lamb, who was not a party to it, and reserved to the court jurisdiction of the cause to make further orders for the

preservation of the rights of the parties. The petition in the contempt proceeding then pending was later dismissed by the district court on the motion of Lamb, setting up want of jurisdiction of the subject matter and of his person.

The court below rightly held that upon the facts presented by the petition, proceedings might be had against Lamb, either by bill in equity, as was done by the supplemental bill filed by the receiver in No. 433, *Lamb* v. *Schmitt,* 284 U. S. —, decided this day, or by contempt proceedings, as in the present case, or by both, to compel restoration of the diverted property to the custody of the court. The petitioner, as counsel in the principal suit, had notice of the equities alleged in the bill. So far as he acquired, *pendente lite,* any interest in the property involved in the suit, he was not only subject to those equities, but bound by any decree which the court might make with respect to it, to the extent that it might adjudicate the rights of the plaintiffs against the defendants. *Independent Coal & Coke Co.* v. *United States,* 284 U. S. —, decided February 15, 1932; *Mellen* v. *Moline Malleable Iron Works,* 131 U. S. 352, 371; *Tilton* v. *Cofield,* 93 U. S. 163; *Warren* v. *Marcy,* 97 U. S. 96, 105; cf. *Terrell* v. *Allison,* 21 Wall. 289. The provision in the decree that it should be without prejudice to the rights of Lamb postponed until further order of the court the adjudication of his rights, but did not forestall it. His receipt and diversion of the property, which was then *in gremio legis,* see *Metcalf* v. *Barker,* 187 U. S. 165, 173 *et seq.; Pierce* v. *United States,* 255 U. S. 398, tended to defeat any decree which the court might ultimately make in the cause. That and his retention of the property after the decree was entered were in fraud of the rights of the plaintiffs to prosecute the suit to its conclusion, and an obstruction of justice constituting a contempt of court which might be proceeded against civilly. *Merrimack River Savings Bank* v. *Clay Center,* 219 U. S. 527, 535-536; *Clay* v. *Waters,* 178 Fed. 385, 390, 391. Cf. *In re Swan,* 150 U. S. 637.

The objections chiefly urged by petitioner are that the present proceeding was criminal in its nature, to punish for criminal contempt, and hence the order dismissing the petition was not appealable, *United States* v. *Sanges,* 144 U. S. 310, 323; *Toledo Newspaper Company* v. *United States,* 247 U. S. 402, 410; and that if the proceeding be regarded as civil, still no appeal would lie from

the order of dismissal, because no appeal was taken from the final decree in the principal suit.

We think it plain that the petition, although inartistically drawn, invoked the power of the court to punish for contempt in aid of the adjudication sought in the principal suit. Hence, the proceeding is to be deemed a civil one and, as the order of the District Court finally denied the relief sought, it could be appealed. The petition charged the contumacious acts of Lamb in diverting the property, which was the subject matter of the principal suit. The prayer of the petition for relief, which is determinative of the nature of the proceeding, see *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 448, declared that its purpose was to secure restoration of the diverted property in order to carry out the decree in the principal suit. The court cited Lamb to show cause why he should not be punished for contempt and why he should not be adjudged to hold the property subject to the jurisdiction of the court.

To the extent that this purpose might be effected by process against Lamb for contempt, the proceeding was remedial, to aid in giving to the plaintiffs the property which, as against the defendants in the principal suit, they were entitled to receive. It is the purpose of the punishment, rather than the character of the act punished, which determines whether the proceeding is for civil or criminal contempt. *Gompers* v. *Bucks Stove & Range Co., loc. cit. supra; Doyle* v. *London Guarantee & Accident Co.*, 204 U. S. 599, 604-605, 607. Even though the particular acts of the petitioner may take the characteristics of both a civil and a criminal contempt, and so may not be classified as exclusively one or the other; see *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329, still, under the allegations and prayer of the petition, it would have been competent for the District Court to have punished the contempt by its coercive order until Lamb made restitution of the property or to have imposed a fine, payable to the receiver, compensating for its taking. A proceeding to secure such relief is civil in its nature. See *Gompers* v. *Bucks Stove & Range Co., supra*, p. 449; *Bessette* v. *W. B. Conkey Co., supra*, p. 338; *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U. S. —, decided February 15, 1932.

The decree of the District Court, dismissing the petition, finally adjudicated the rights asserted by it. *Shaffer* v. *Carter*, 252 U. S.